

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

08 JAN 28 AM 11:05

Magistrate Case No.

'08 MJ0241

UNITED STATES OF AMERICA,

Plaintiff,

v.

1.) Nicole Marie BANNER,
2.) Pedro AVALOS

Defendant(s)

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

COMPLAINT FOR VIOLATION OF:

DEPUTY

Title 8 U.S.C., Sec. 1324 (a)(1)(A)(ii)

Transportation of Illegal
Aliens

The undersigned complainant, being duly sworn, states:

On or about **January 26, 2008** within the Southern District of California, defendants **Nicole Marie BANNER and Pedro AVALOS**, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that aliens, namely, **Moises DE LA LUZ-Martinez, Beatriz DE LA LUZ-Martinez, and Francisco Javier VEGA-Rodriguez** had come to, entered and remained in the United States in violation of law, did transport and move, said aliens within the United States in furtherance of such violation of law; in violation of Title 8, United States Code, Section 1324(a)(1)(A)(ii).

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.


SIGNATURE OF COMPLAINANT

James Trombley
Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 28TH DAY OF JANUARY,
2008.


Barbara L. Major

UNITED STATES MAGISTRATE JUDGE

CONTINUATION OF COMPLAINT:**Nicole Marie BANNER****Pedro AVALOS****PROBABLE CAUSE STATEMENT**

Furthermore, the complainant states that **Moises DE LA LUZ-Martinez, Beatriz DE LA LUZ-Martinez, and Francisco Javier VEGA-Rodriguez** are citizens of a country other than the United States; that said aliens have admitted that they are deportable; that their testimony is material, that it is impracticable to secure their attendance at the trial by subpoena; and they are material witnesses in relation to this criminal charge and should be held or admitted to bail pursuant to Title 18, United States Code, Section 3144.

On Saturday January 26, 2008, Border Patrol Agents assigned to the North County Smuggling Interdiction Group (NCSIG) were performing anti-smuggling duties in the Anza-Borrego area in San Diego County. The NCSIG agents were working in plainclothes, and driving unmarked Department of Homeland Security (DHS) law enforcement vehicles. At approximately 4:10 P.M. Supervisory Border Patrol Agent M. Gonzalez was monitoring traffic near the intersection of County S-2 and Highway 78 when he observed two vehicles approach his location from County S-2 and then stop at the posted stop sign. The first vehicle, a silver-colored Dodge Durango SUV, had dealership paper license plates visible. The second vehicle, which was following very closely behind the Dodge, was a black Ford Edge, bearing California license plates. SBPA Gonzalez noticed that the rear of the silver Durango SUV was riding low as if it was heavily-laden. SBPA Gonzalez began following behind the vehicles and continued to observe the actions of both vehicles. SBPA Gonzalez called Sector Communications and ran record checks on the Ford's license plates. Registration checks revealed that the black Ford was a rental car owned by PV Holding Corporation of Los Angeles, California. As SBPA Gonzalez continued to observe the vehicles, both the Dodge and the Ford began to cross over the double yellow lines while passing other westbound vehicles in an unsafe manner on blind curves. These actions are common tactics used by alien smugglers in an attempt to evade and elude law enforcement personnel who might be following them. SBPA Gonzalez was unable to maintain visual contact with the suspect vehicles due to these actions. SBPA Gonzalez put out the description and the direction of travel of the vehicles via his service radio.

At approximately 4:20 P.M., Border Patrol Agent J. Pederson observed the silver Dodge and the black Ford traveling west on Highway 78 near Santa Ysabel, California. Agent Pederson was driving an unmarked DHS vehicle and was in full Border Patrol uniform. While observing both vehicles, Agent Pederson noticed that the vehicles continued to drive erratically by crossing over the double yellow lines into oncoming traffic while passing moving vehicles. In the interest of public safety Agent Pederson activated his emergency equipment and attempted a traffic stop on the black Ford. The Ford slowed down but continued to travel several more minutes. This is also a tactic used by alien smugglers to interfere with law enforcement by diverting attention away from the lead vehicle that contains contraband or illegal aliens. Agent J. Pederson alerted NCSIG Agents that he had the black Ford stopped while the Dodge continued west at a high rate of speed. Agent Pederson approached the Ford and identified himself as a United States Border Patrol Agent. The Ford's driver, later identified as the defendant **Pedro AVALOS**, became upset and demanded to know why he was stopped if he didn't have any bodies with him. Agent Pederson advised AVALOS that he was being pulled over because of the erratic unsafe manner in which he was handling his motor vehicle. Agent Pederson then asked AVALOS for his identification. AVALOS stated that he had no identification on him at this time. Agent Pederson then requested record checks on AVALOS' stated name and date of birth.

At approximately 4:25 P.M. SBPA Gonzalez observed the silver Dodge a few miles further west along Highway 78 from the location where the Ford was stopped by Agent Pederson. SBPA Gonzalez activated his emergency equipment in the interest of public safety to initiate a traffic stop on the Dodge. SBPA Gonzalez approached the Dodge and identified himself as a United States Border Patrol Agent.

CONTINUATION OF COMPLAINT:**Nicole Marie BANNER****Pedro AVALOS**

Agent Gonzalez asked the driver where she was coming from, and why was she in such a hurry. The driver, later identified as defendant **Nicole Marie BANNER**, responded that she had just come from getting something to eat in Julian, California. SBPA Gonzalez advised BANNER that he had been following her from the intersection of County S-2 and Highway 78. SBPA Gonzalez then asked BANNER for reasons of officer safety for permission to search the vehicle. BANNER then gave consent and when asked if she has anything in the car that she is not supposed to have, such as narcotics or firearms, BANNER responded "I have bodies". Agent Martinez identified himself as a United States Border Patrol Agent and questioned each of the five passengers in the Dodge as to their citizenship. All five passengers answered that they were citizens and nationals of Mexico without any immigration documents allowing them to be in or reside in the United States legally. Once again all of the passengers responded that they did not and that they were in the United States illegally. SBPA Gonzalez then arrested BANNER for transportation of illegal aliens. Agent Martinez and Senior Patrol Agent E. Ortega then arrested the five passengers.

Senior Patrol Agent K. Tobin, a Sector Canine Handler, conducted a canine sweep of the Dodge with his partner "Kuantia". A search of the Dodge yielded a small amount of a substance suspected to be marijuana which was found on the passenger seat along with a stun gun. The search also revealed a California Identification Card issued to Pedro AVALOS which was found in a pocket behind the driver side seat. Also in the Dodge, a new Boost cellular telephone was found along with the packaging that it had been purchased in.

SBPA Gonzalez then radioed Agent Pederson and asked the name of the individual who was being detained in the Ford vehicle. Agent Pederson replied that the driver of the Ford had given the name Pedro AVALOS. Both the Ford and the Dodge vehicles had cellular telephone packaging in them, and both cell phones were on and functioning at the time of the vehicle stops. AVALOS' nickname "Pistol Pete" appeared on both cell phones linking the two vehicles together. Avalos was then arrested as a co-principle in this smuggling event.

Both defendants and the five aliens were transported to the Murrieta Border Patrol Station for further processing and record checks.

DEFENDANT STATEMENT (Nicole Marie BANNER):

At approximately 9:03 P.M., BANNER was advised of her Miranda rights, and initially exercised these rights. BANNER then stated she had questions concerning the arrest. BANNER was reminded she invoked her right not to answer any questions. BANNER was asked if she would like to be reminded of her Miranda rights and continue questioning. BANNER stated she would like to answer some questions. BANNER was re-advised of her Miranda warnings.

BANNER stated she is a citizen of the United States by birth in Newport Beach, California. BANNER was questioned about the other defendant and stated she only knew him by his first name, Pedro. When questioned about her smuggling activities BANNER stated she had recently been evicted from her apartment in Chula Vista, California and needed money support her two children. An acquaintance of hers told her she could make money by smuggling illegal aliens into the United States for an undisclosed amount of money.

CONTINUATION OF COMPLAINT:**Nicole Marie BANNER****Pedro AVALOS**

BANNER stated she picked up the Dodge SUV in National City, California and that the cell phone was already in the vehicle. BANNER claimed the marijuana was hers. BANNER stated she was told to drive to a location near Jamul, California and pick up some illegal aliens. BANNER claimed that she received driving instructions through the cell phone in the Dodge. BANNER stated it was her first time she had ever smuggled aliens. BANNER requested questioning cease and that she would like to call her father. All questioning ceased.

DEFENDANT STATEMENT (Pedro AVALOS):

At approximately 10:31 P.M., AVALOS was advised of his Miranda rights. AVALOS stated that he did understand these rights and initially did not wish to answer questions. The videotape was not stopped but questioning was concluded. AVALOS then stated he had questions concerning his arrest. AVALOS was reminded that he invoked the right not to answer any questions. He was asked by Agent Martinez if he would like to be reminded of his Miranda rights and continue questioning under oath. AVALOS stated that he would like to answer some questions.

At approximately 10:34 p.m., AVALOS was re-advised of his Miranda rights on videotape by Agent Martinez. AVALOS admitted that he has been previously arrested for alien smuggling, but he denied any involvement with this current smuggling event. AVALOS was questioned as to why an identification card that belonged to him was found in the vehicle that contained illegal aliens. AVALOS did acknowledge that the identification card belonged to him, but would not admit to any knowledge of alien smuggling. AVALOS was also asked why his cell phone was electronically linked with the phone that the other smuggler had in the other vehicle with the illegal aliens. At this time AVALOS opted not to answer anymore questions and all questioning was stopped.

MATERIAL WITNESS STATEMENTS:

Material witness **Moises DE LA LUZ-Martinez** stated that he is a citizen of Mexico. DE LA LUZ stated that his sister made arrangements for him to be smuggled into the United States for \$3,000.00 USD, with the final destination of Los Angeles, California. DE LA LUZ claims that he and four other aliens crossed the border on foot near Tecate, California on or about January 25, 2008 and boarded a gray truck.

Material witness **Beatriz DE LA LUZ-Martinez** stated that she is a citizen of Mexico. DE LA LUZ stated that her uncle made arrangements for her to be smuggled into the United States for \$3,000.00 USD, with the final destination of Los Angeles, California. DE LA LUZ claims that she and four other aliens accompanied by two footguides crossed the border on foot near Tecate, California on or about January 25, 2008. She and four other aliens boarded a gray truck. DE LA LUZ stated the vehicle was stopped by Border Patrol Agents approximately one hour later. DE LA LUZ identified the defendant Nicole Marie BANNER as the driver of the gray vehicle.

Material witness **Francisco VEGA-Rodriguez** stated that he is a citizen of Mexico. VEGA stated that he does not possess documents to enter or remain in the United States legally. VEGA claimed that his mother-in-law made arrangements for him to be smuggled into the United States for \$2,500.00 USD, with the final destination of Menifee, California. VEGA stated that he crossed illegally into the United States near Tecate, California. VEGA stated that a gray-colored SUV arrived driven by a female with long hair. VEGA and four other persons boarded the SUV sitting in the rear. VEGA identified the defendant Nicole Marie BANNER as the driver of the gray vehicle.